February 7, 1995; to the Committee on Governmental Affairs.

EC–513. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–16 adopted by the Council on February 7, 1995; to the Committee on Governmental Affairs.

EC–514. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–17 adopted by the Council on February 7, 1995; to the Committee on Governmental Affairs.

EC–515. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–18 adopted by the Council on February 7, 1995; to the Committee on Governmental Affairs.

EC–516. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–19 adopted by the Council on February 7, 1995; to the Committee on Governmental Affairs.

EC–517. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–21 adopted by the Council on February 7, 1995; to the Committee on Governmental Affairs.

EC–518. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–22 adopted by the Council on February 7, 1995; to the Committee on Governmental Affairs.

EC–519. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–23 adopted by the Council on February 7, 1995; to the Committee on Governmental Affairs.

EC–520. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–24 adopted by the Council on February 7, 1995; to the Committee on Governmental Affairs.

EC–521. A communication from the District of Columbia Auditor, transmitting, pursuant to law, the report entitled ''Audit of the Operations of the Office of the Campaign Finance''; to the Committee on Governmental Affairs.

EC–522. A communication from Comptroller General of the United States, transmitting, pursuant to law, the report entitled ''Independence of Legal Services''; to the Committee on Governmental Affairs.

EC–523. A communication from Administrator of General Services Administration, transmitting, pursuant to law, the report on the disposal of surplus Federal real property; to the Committee on Governmental Affairs.

EC–524. A communication from Chairman of the Administrative Conference of the United States, transmitting, a draft of proposed legislation to amend the Administrative Conference Act; to the Committee on Governmental Affairs.

EC–525. A communication from the Inspector General Agency for International Development, transmitting, pursuant to law, the report of an audit; to the Committee on Governmental Affairs.

EC–526. A communication from Chairman of the Administrative Conference of the United States, transmitting, pursuant to law, the report entitled ''Toward Improved Agency Dispute Resolution: Implementing the ADR Act''; to the Committee on Governmental Affairs.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. THURMOND:

S. 546. A bill for the relief of Dan Aurel Suciu; to the Committee on the Judiciary.

By Mr. SIMON:

S. 547. A bill to extend the deadlines applicable to certain hydroelectric projects under the Federal Power Act, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ROCKEFELLER:

S. 548. A bill to provide quality standards for mammograms performed by the Department of Veterans Affairs; to the Committee on Veterans Affairs.

By Mr. BUMPERS:

S. 549. A bill to extend the deadline under the Federal Power Act applicable to the construction of three hydroelectric projects in the State of Arkansas; to the Committee on Energy and Natural Resources.

By Mr. EXON:

S. 550. A bill to amend the National Labor Relations Act and the Railway Labor Act to prevent discrimination based on participation in labor disputes; to the Committee on Labor and Human Resources.

By Mr. CRAIG:

S. 551. A bill to revise the boundaries of the Hagerman Fossil Beds National Monument and the Craters of the Moon National Monument, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BURNS (for himself and Mr. BAUCUS):

S. 552. A bill to allow the refurbishment and continued operation of a small hydroelectric facility in central Montana by adjusting the amount of charges to be paid to the United States under the Federal Power Act, and for other purposes; to the Committee on Energy and Natural Resources.

By Ms. MOSELEY-BRAUN:

S. 553. A bill to amend the Age Discrimination in Employment Act of 1967 to reinstate an exemption for certain bona fide hiring and retirement plans applicable to State and local firefighters and law enforcement officers, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. FEINGOLD:

S. 554. A bill to amend the provisions of titles 5 and 28, United States Code, relating to equal access to justice, award of reasonable costs and fees, hourly rates for attorney fees, administrative settlement officers, and for other purposes; to the Committee on the Judiciary.

By Mrs. KASSEBAUM (for herself, Mr. KENNEDY, and Mr. FRIST):

S. 555. A bill to amend the Public Health Service Act to consolidate and reauthorize health professions and minority and disadvantaged health education programs, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. KERRY (for himself and Mr. KENNEDY):

S. 556. A bill to amend the Trade Act of 1974 to improve the provision of trade readjustment allowances during breaks in training, and for other purposes; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ROCKEFELLER:

S. 548. A bill to provide quality standards for mammograms performed by the Department of Veterans Affairs; to the Committee on Veterans' Affairs.

THE WOMEN VETERANS' MAMMOGRAPHY QUALITY STANDARDS ACT

• Mr. ROCKEFELLER. Mr. President, for a number of years, I have been active—both through legislation and oversight activity—in seeking to improve VA's response to women veterans. While there has been some progress, much remains to be done. During the last Congress, we were poised to make some significant improvements, particularly in defining which services VA must furnish to women veterans. Unfortunately, that legislation, along with other vital measures, died in the closing hours of the Congress. While those issues may still be brought into play on legislation later on this year, one element of our prior effort can clearly be separated out at this time and dealt with on its own merits—and that's what the bill I am introducing today will do.

BACKGROUND

Mr. President, the bill I am introducing, which is cosponsored by Senators AKAKA, JEFFORDS, MIKULSKI, MOSELEY-BRAUN, and MURKOWSKI, would ensure that women veterans will receive safe and accurate mammograms. Under this measure, VA facilities that furnish mammography would be required to meet quality assurance and quality control standards that are no less stringent than those to which other mammography providers are subject under the Mammography Quality Standards Act. VA facilities that contract with non-VA facilities would be required to contract only with facilities that comply with that act. I will now highlight briefly the provisions contained in this legislation.

SUMMARY OF PROVISIONS

Mr. President, this legislation would establish quality standards for mammography services furnished by VA which would:

First, require that all VA facilities that furnish mammography be accredited by a private nonprofit organization designated by the Secretary of Veterans Affairs.

Second, require the Secretary to designate only an accrediting body that meets the standards for accrediting bodies issued by the Secretary of Health and Human Services for purposes of accrediting mammography facilities subject to the Mammography Quality Standards Act of 1992—Public Law 102–539.

Third, require the Secretary, in consultation with the Secretary of Health and Human Services, to issue quality assurance and quality control standards for mammography services furnished in VA facilities that would be no less stringent than the Department of Health and Human Services regulations to which other mammography providers are subject under the Mammography Quality Standards Act of 1992.

Fourth, require the Secretary to issue such regulations not later than

120 days after enactment of this legislation.

Fifth, require the Secretary to inspect mammography equipment operated by VA facilities on an annual basis in a manner consistent with requirements contained in the Mammography Quality Standards Act concerning annual inspections of mammography equipment by the Secretary of Health and Human Services, except that the Secretary of Veterans' Affairs would not have the authority to delegate inspection responsibilities to a State agency.

Sixth, require VA health care facilities that provide mammography through contracts with non-VA providers to contract only with mammography providers that comply with the Department of Health and Human Services' quality assurance and quality control regulations.

Seventh, require the Secretary, not later than 180 days after the Secretary prescribes the mammography quality assurance and quality control regulations, to submit a report to the House and Senate Committees on Veterans' Affairs on the implementation of those regulations.

CONCLUSION

Mr. President, in closing, I emphasize just how vital improving VA health services for women veterans is to VA's future. Regardless of the outcome of national health care reform efforts, progress on health care reform at the State level dictates that VA must compete directly with non-VA providers. In addition, the State plans probably will provide veterans entitled to VA care, many of whom are presently uninsured, a wider range of health care choices. Under this scenario, VA would have to furnish a full continuum of health services, including quality mammography, in order to compete successfully for women veteran patients.

This bill would hold VA to the mammography standards required of other providers. Anything less would deny the great debt we owe to the courageous women who have sacrificed themselves in service to our Nation.

Mr. President, I look forward to working with the chairman of the Committee on Veterans' Affairs, Senator SIMPSON, the cosponsors of this bill, and the other members of the committee to gain prompt action on it in our committee and the Senate. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 548

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Women Veterans' Mammography Quality Standards Act''.

SEC. 2. MAMMOGRAPHY QUALITY STANDARDS.

(a) PERFORMANCE OF MAMMOGRAMS.—Mammograms may not be performed at a Department of Veterans Affairs facility unless that facility is accredited for that purpose by a private nonprofit organization designated by the Secretary of Veterans Affairs. The organization designated by the Secretary under this subsection shall meet the standards for accrediting bodies establishing by the Secretary of Health and Human Services under section 354(e) of the Public Health Service Act (42 U.S.C. 263b(e)).

(b) QUALITY STANDARDS.—(1) Not later than 120 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall prescribe quality assurance and quality control standards relating to the performance and interpretation of mammograms and use of mammogram equipment and facilities by personnel of the Department of Veterans Affairs. Such standards shall be no less stringent than the standards prescribed by the Secretary of Health and Human Services under section 354(f) of the Public Health Service Act.

(2) The Secretary of Veterans Affairs shall prescribe standards under this subsection in consultation with the Secretary of Health and Human Services.

(c) INSPECTION OF DEPARTMENT EQUIPMENT.—(1) The Secretary of Veterans Affairs shall, on an annual basis, inspect the equipment and facilities utilized by and in Department of Veterans Affairs health-care facilities for the performance of mammograms in order to ensure the compliance of such equipment and facilities with the standards prescribed under subsection (b). Such inspection shall be carried out in a manner consistent with the inspection of certified facilities by the Secretary of Health and Human Services under section 354(g) of the Public Health Services Act.

(2) The Secretary of Veterans Affairs may not delegate the responsibility of such secretary under paragraph (1) to a State agency.

(d) APPLICATION OF STANDARDS TO CONTRACT PROVIDERS.—The Secretary of Veterans Affairs shall ensure that mammograms performed for the Department of Veterans Affairs under contract with any non-Department facility or provider conform to the quality standards prescribed by the Secretary of Health and Human Services under section 354 of the Public Health Service Act.

(e) REPORT.—(1) The Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the quality standards prescribed by the Secretary under subsection (b)(1).

(2) The Secretary shall submit the report not later than 180 days after the date on which the Secretary prescribes such regulations.

(f) DEFINITION.—In this section, the term ''mammogram'' shall have the meaning given such term in section 354(a)(5) of the Public Health Service Act (42 U.S.C. 263b(a)).●

By Mr. EXON:

S. 550. A bill to amend the National Labor Relations Act and the Railway Labor Act to prevent discrimination based on participation in labor disputes; to the Committee on Labor and Human Resources.

LABOR DISPUTE LEGISLATION

Mr. EXON. Mr. President, I rise today to introduce a bill which I hope—and I emphasize ''I hope''—will serve as a common ground for the two warring factions very prominent in our society today.

My bill amends the Federal labor law by providing a short-term ban on permanent replacement workers for the first 60 days of a strike. Then permanent replacements could be gradually phased in over a 12-month period so that an employer could hire 100 percent of their work force as permanent replacements by the end of a year.

I believe that those two warring factions—management and labor—need to focus more on what is in our Nation's long-term best interests and less on getting and keeping an upper hand. I caution either side from thinking that crushing blows or complete victories are within reach. They are not. I have proposed my idea before but neither side wanted to take the first step.

To management I say you have leveraged a rarely used practice into what is now the sledgehammer of negotiations. The right to strike hangs by the thread that separates the difference between being fired and being permanently replaced. To labor I say the global economy has remade the rules. International competitiveness may mean that labor will have to settle for less than the whole loaf sometimes.

I voted against NAFTA and against GATT for various reasons, but some of the most important involved my concern that our chase for cheap labor would erode the ground under our workers and the standard of living in America. But that is over and done with. We can shore up as best we can, but I fear the erosion may continue, not subside.

The two old bulls, labor and management, are still at it, with their horns locked, straining. The harmful effects of that intransigence can be seen in the festering sore of professional baseball. They often threaten to pull the Senate into the trenches and seem to have done so once again.

Mr. President, I make this appeal: Congress has the power to step in and set some ground rules instead of being pushed this way and pushed that. Let us take this opportunity to impose some order, set some rules, then hopefully set this issue aside and see if such a resolution works.

Under my bill, management is barred from simply replacing workers permanently the day after the strike. Certainly management can keep the plant open, if they choose, with temporary workers. Labor knows, however, that the meter is running under my bill and that the effect of the strike is diminished with time.

For example, after 60 days, the employer can hire 10 percent of the work force as replacements, permanent replacements; after 90 days, 20 percent; after 4 months, 30 percent; after 5 months, 40 percent; after 6 months, 50 percent; after 9 months, 75 percent; and after 1 year, 100 percent, if that is the desire of management.

Management will say that the 60-day ban is too long, while labor will say that a year before being completely replaced is too short. I say that sounds like the start of a good compromise.

Congress can break this logjam, and I think it should. I do not believe this is a matter to be resolved by Executive order but, rather, by law. I think this proposal can satisfy well-meaning and well-intentioned people on both sides of the issue and may help us to look forward in both the Senate and this country to something better.

Mr. President, I suggest that we look ahead to the 21st century. Let us quit sticking our heads in the sand with meaningless gestures. Anyone who is looking beyond next year or the next election, who truly believes in collective bargaining, should recognize that international competition in the 21st century demands labor/management cooperation and not war.

I submit it is not fair or reasonable to expect a union worker to strike for economic grievances when he or she could lose their job the very first day that they dare walk the picket line. Some collective bargaining. With just a little bit of backbone and a little bit of reason and a little bit of understanding, we could properly correct this situation that continues to tear American labor and management apart.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 550

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF LABOR DISPUTES.

Section 8 of the National Labor Relations Act (29 U.S.C. 158) is amended—

(1) in subsection (a)—

(A) by striking the period at the end of paragraph (5) and inserting ''; or''; and

(B) by adding at the end thereof the following new paragraph:

''(6) subject to subsection (h), to promise, threaten, or take other action—

''(A) to hire a permanent replacement for an employee who—

''(i) at the commencement of a labor dispute was an employee of the employer in a bargaining unit in which a labor organization was the certified or recognized exclusive representative. or, on the basis of written authorizations by a majority of the employees, was seeking to be so certified or recognized; and

''(ii) in connection with the dispute has engaged in converted activities for the purpose of collective bargaining or other mutual aid or protection through that labor organization; or

''(B) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of clauses (i) and (ii) of subparagraph (A) and who is working for or has unconditionally offered to return to work for the employer, out of a preference for any other individual that is based on the fact that the individual is performing, has performed, or has indicated a willingness to perform bargaining unit work for the employer during the labor dispute.''; and

(2) by adding at the end thereof the following new subsection:

''(h)(1) An employer may not hire a permanent replacement for an employee described in subsection (a)(6) unless the employer compiles with the requirements under paragraph (2).

''(2)(A) An employer may hire a permanent replacement for an employee described in subsection (a)(6)(A) during the period beginning 61 days after the date of the commencement of a dispute described in subsection (a)(6) and ending 90 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 10 percent of the total number of employees who were in the bargaining unit described in subsection (a)(6)(A)(i) on the date of the commencement of the dispute.

''(B) An employer may hire a permanent replacement for an employee described in subsection (a)(6)(A) during the period beginning 91 days after the date of the commencement of a dispute described in subsection (a)(6) and ending 120 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 20 percent of the total number of employees who were in the bargaining unit described in subsection (a)(6)(A)(i) on the date of the commencement of the dispute.

''(C) An employer may hire a permanent replacement for an employee described in subsection (a)(6)(A) during the period beginning 121 days after the date of the commencement of a dispute described in subsection (a)(6) and ending 150 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 30 percent of the total number of employees who were in the bargaining unit described in subsection (a)(6)(A)(i) on the date of the commencement of the dispute.

''(D) An employer may hire a permanent replacement for an employee described in subsection (a)(6)(A) during the period beginning 151 days after the date of the commencement of a dispute described in subsection (a)(6) and ending 180 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 40 percent of the total number of employees who were in the bargaining unit described in subsection (a)(6)(A)(i) on the date of the commencement of the dispute.

''(E) An employer may hire a permanent replacement for an employee described in subsection (a)(6)(A) during the period beginning 181 days after the date of the commencement of a dispute described in subsection (a)(6) and ending 270 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 50 percent of the total number of employees who were in the bargaining unit described in subsection (a)(6)(A)(i) on the date of the commencement of the dispute.

''(F) An employer may hire a permanent replacement for an employee described in subsection (a)(6)(A) during the period beginning 271 days after the date of the commencement of a dispute described in subsection (a)(6) and ending 360 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 75 percent of the total number of employees who were in the bargaining unit described in subsection (a)(6)(A)(i) on the date of the commencement of the dispute.

''(G) An employer may hire a permanent replacement for an employee described in subsection (a)(6)(A) effective 361 days after the date of the commencement of a dispute described in subsection (a)(6).''.

SEC. . PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF RAILWAY LABOR DISPUTES.

Paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152) is amended—

(1) by inserting ''(a)'' after ''Fourth.'';

(2) by adding at the end thereof the following new subsections:

''(b) Subject to subsection (c), no carrier, or officer or agent of the carrier, shall promise, threaten or take other action—

''(1) to hire a permanent replacement for an employee who—

''(A) at the commencement of a dispute was an employee of the carrier in a craft or class in which a labor organization was the designated or authorized representative or, on the basis of written authorizations by a majority of the craft or class, was seeking to be so designated or authorized; and

''(B) in connection with that dispute has exercised the right to join, to organize, to assist in organizing, or to bargain collectively through that labor organization; or

''(2) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of paragraph (1) and who is working for or has unconditionally offered to return to work for the carrier, out of a preference for any other individual that is based on the fact that the individual is employed, was employed, or indicated a willingness to be employed during the dispute.

''(c)(1) A carrier, or an officer or agent of the carrier, may not hire a permanent replacement for an employee under subsection (b) unless the carrier or officer or agent complies with the requirements under paragraph (2).

''(2)(A) A carrier, or an officer or agent of the carrier, may hire a permanent replacement for an employee described in subsection (b) during the period beginning 61 days after the date of commencement of a dispute described in subsection (b) and ending 90 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 10 percent of the total number of employees who were in the craft or class described in subsection (b).

''(B) A carrier, or an officer or agent of the carrier, may hire a permanent replacement for an employee described in subsection (b) during the period beginning 91 days after the date of commencement of a dispute described in subsection (b) and ending 120 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 20 percent of the total number of employees who were in the craft or class described in subsection (b).

''(C) A carrier, or an officer or agent of the carrier, may hire a permanent replacement for an employee described in subsection (b) during the period beginning 121 days after the date of commencement of a dispute described in subsection (b) and ending 150 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 30 percent of the total number of employees who were in the craft or class described in subsection (b).

''(D) A carrier, or an officer or agent of the carrier, may hire a permanent replacement for an employee described in subsection (b) during the period beginning 151 days after the date of commencement of a dispute described in subsection (b) and ending 180 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 40 percent of the total number of employees who were in the craft or class described in subsection (b).

''(E) A carrier, or an officer or agent of the carrier, may hire a permanent replacement for an employee described in subsection (b) during the period beginning 181 days after the date of commencement of a dispute described in subsection (b) and ending 270 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 50 percent of the total number of employees who were in the craft or class described in subsection (b).

''(F) A carrier, or an officer or agent of the carrier, may hire a permanent replacement for an employee described in subsection (b) during the period beginning 271 days after the date of commencement of a dispute described in subsection (b) and ending 360 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 75 percent of the total number of employees who were in the craft or class described in subsection (b).

''(G) A carrier, or an officer or agent of the carrier, may hire a permanent replacement for an employee described in subsection (b) effective 361 days after the date of commencement of a dispute described in subsection (b).''.

By Mr. BURNS (for himself and Mr. BAUCUS):

S. 552. A bill to allow the refurbishment and continued operation of a small hydroelectric facility in central Montana by adjusting the amount of charges to be paid to the United States under the Federal Power Act, and for other purposes; to the Committee on Energy and Natural Resources.

FLINT CREEK HYDROELECTRIC FACILITY LEGISLATION

Mr. BURNS. Mr. President, I rise today to introduce legislation to allow for the orderly transfer of a license for the operation of a small hydroelectric facility in my State of Montana. This operation is no longer generating electricity. The utility that owns it, Montana Power, no longer finds it economical to continue to do so. Montana Power would like to turn the operation and ownership of the dam over to someone else. And there is a potential buyer, the county of Granite. The county would like to buy the facility, refurbish it, and continue to generate low-cost electricity for itself and its neighbors.

However, FERC, the agency that must approve the license request is demanding that the buyer pay for the rent of Forest Service land that lies under the lake that was created by the dam. The Forest Service gets no benefit from the land. It's under several feet of water. And the Federal Government already owns one-third of my State of Montana.

I believe that this bill, which will defer the rental costs for 5 years which will allow the county to get its repair work done and get the generation online, is an equitable solution to the problem posed by FERC. I hope that they will support the bill.

By Ms. MOSELEY-BRAUN:

S. 553. A bill to amend the Age Discrimination in Employment Act of 1967 to reinstate an exemption for certain bona fide hiring and retirement plans applicable to State and local firefighters and law enforcement officers, and for other purposes; to the Committee on Labor and Human Resources.

THE AGE DISCRIMINATION IN EMPLOYMENT AMENDMENTS OF 1995

● Ms. MOSELEY-BRAUN. Mr. President, I introduce the Age Discrimination in Employment Amendments of 1995, legislation designed to give State and local governments the same right to set mandatory retirement ages and maximum hiring ages for their police and firefighters that the Federal Government currently enjoys.

Throughout the 104th Congress, there has been a great deal of discussion about the need for those of us in this body to hold ourselves accountable to the same standards other Americans have to meet.

We have debated and passed congressional coverage legislation, which will apply to Congress a number of laws that have already been applied to the private sector. We have also debated and passed unfunded mandates legislation in order to ensure that the Federal Government does not impose mandates on State and local governments without the funding necessary to cover the cost of those mandates.

The legislation I am introducing today is based on this same basic theme. Currently, the Federal Government enjoys a permanent exemption from the Age Discrimination in Employment Act that allows it to set mandatory retirement ages and maximum hiring ages for its public safety officers. In effect, this exemption authorizes Federal public safety agencies to use mandatory retirement ages and maximum hiring ages for their police officers and firefighters including:

The U.S. Park Police; the Federal Bureau of Investigation; Department of Justice Law Enforcement personnel; District of Columbia firefighters; U.S. Forest Service firefighters; the Central Intelligence Agency; the Capitol Police; and Federal firefighters.

However, this same exemption from the Age Discrimination in Employment Act is not available to State and local governments.

My legislation corrects this disparity by allowing State and local governments the right to set mandatory retirement and maximum hiring ages if they so choose.

Mr. President, I want to emphasize that last point. This legislation merely allows State and local governments to set mandatory retirement and maximum hiring ages if they so choose.

The bill does not set national, mandatory retirement and maximum hiring ages for police and firefighters. It does not require State local governments to create their own mandatory retirement and maximum hiring ages. It does not even encourage them to do so. It merely grants State and local governments the same rights in this area which are currently being enjoyed by the Federal Government.

As a general rule, the Age Discrimination in Employment Act prohibits employers from discriminating against workers solely on the basis of age, and generally prohibits the use of mandatory retirement and maximum hiring ages.

Prior to Congress enacting an exemption in 1986, the Age Discrimination in Employment Act allowed State and local governments to use mandatory retirement and maximum hiring ages for their public safety officers only if they could prove in court that these rules were bona fide occupational qualifications [BFOQ's] reasonably necessary for the normal operation of the business.

Although this approach sounds reasonable, courts in some jurisdictions ruled limits permissible while identical limits were held impermissible in other jurisdictions. For example, the Missouri Highway Patrol's maximum hiring age of 32 was upheld while Los Angeles County Sheriff's maximum hiring age of 35 was not. East Providence's mandatory retirement age of 60 for police officers was upheld while Pennsylvania's mandatory retirement age of 60 was struck down.

As a result, no State or local government could be sure of the legality of its hiring or retirement policies. They could, however, be sure of having to spend scarce financial resources to defend their policies in court.

The 1986 amendment to the Age Discrimination in Employment Act authorized State and local governments to set maximum hiring ages and mandatory retirement ages until January 1, 1994. It also ordered the EEOC and the Department of Labor to conduct a study to determine:

Whether physical and mental fitness tests can accurately assess the ability of police and firefighters to perform the requirements of their jobs; which particular types of tests are most effective; and what specific standards such tests should satisfy.

Finally, the 1986 amendment directed the EEOC to promulgate guidelines on the administration and use of physical and mental fitness tests for police and firefighters.

Despite the very clear mandate in the 1986 amendment, neither the EEOC nor its researchers complied with that mandate.

While the Penn State researchers who conducted the study concluded that age was a poor predictor of job performance, they failed to evaluate which particular physical and mental fitness tests are most effective to evaluate public safety officers and which specific standards such tests should satisfy.

Nor did the EEOC promulgate guidelines to assist State and local governments in the administration and use of such tests, as Congress directed. As a result, State and local governments find themselves without a public safety exemption from the Age Discrimination in Employment Act, and also

without any guidance as how to test their employees.

I firmly believe that, as a rule, Congress should avoid exempting whole classes of employees from the protection of civil rights laws. We should not carve out exemptions merely because an employer finds civil rights compliance to be too costly or inconvenient. Exemptions must be made only when there is a strong compelling need to do so and there is no other reasonable alternative.

That is the situation here. State and local fire and police agencies must be exempt from ADEA in order to protect and promote the safety of the public. This is literally a life or death matter; if police officers and firefighters cannot adequately perform their duties, people die and people get hurt.

Numerous medical studies have found that age directly affects an individual's ability to perform the duties of a public safety officer. This is not a stereotype. This is not ageism. This is a medical fact.

Consider the facts the American Heart Association found that clearly demonstrate the increased risk of heart attack and death in older individuals. One in six men and one in seven women between the ages of 45–64 has some form of heart disease. The ratio soars to one in three at age 65 and beyond. For people over age 55, incident of stroke more than doubles in each successive decade.

The diminishing of physical capabilities can also be seen in statistics in the field of public safety. For example, although firefighters over 50 comprise only one-seventh of the total number of firefighters, they account for one-third of all firefighter deaths

Now, you may ask why State and local governments cannot just develop tests to screen out those individuals who may still retain their strength at the age of 60 or 70. However, there is no adequate test that can simulate the conditions that firefighters and police officers face in the line of duty.

The fact that an individual passes a fitness test one day does not, in and of itself, mean that the individual is capable of performing the sustained, strenuous, constant, physical activity required of a public safety officer. If a 75-year-old walks in and takes a test, and happens to be healthy on that particular day, a State or local government would have to hire that individual, even though that individual may not, day in and day out, be capable of physically performing his or her job.

Mr. President, as many of you in this body know, I come from a law enforcement background. My father was a police officer. My uncle was a police officer. My brother still is a police officer. I feel very strongly that we in Congress need to do everything we can to ensure that our rank and file officers have everything they need to do their jobs.

The legislation I offer here today is widely supported by rank and file public safety officers. In fact, my office has been besieged by calls and letters and visits from police officers and firefighters who want to see a permanent exemption enacted into law. I would like to read a list of organizations that support this legislation:

The Fire Department Safety Officers Association; the Fraternal Order of Police; the International Association of Firefighters; the International Association of Chiefs of Police; the International Brotherhood of Police Officers; the International Society of Fire Service Instructors; the International Union of Police Associations, AFL–CIO; the National Association of Police Organizations; The National Sheriffs Association; the National Troopers Coalition; the American Federation of State, County and Municipal Employees; the National Public Employer Labor Relations Association; the New York State Association of Chiefs of Police; and the City of Chicago Department of Police.

This legislation is also supported by the following State and local governmental organizations:

The National League of Cities; the National Association of Counties; the National Conference of State Legislatures; and the U.S. Conference of Mayors.

Mr. President, I strongly urge my colleagues to support and quickly enact this carefully drawn, greatly needed legislation.

Mr. President, I ask unanimous consent that the full text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 553

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Age Discrimination in Employment Amendments of 1995''.

SEC. 2. AGE DISCRIMINATION AMENDMENT.

(a) REPEAL OF REPEALER.—Section 3(b) of the Age Discrimination in Employment Amendments of 1986 (29 U.S.C. 623 note) is repealed.

(b) EXEMPTION.—Section 4(j) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(j)), as in effect immediately before December 31, 1993—

(1) is reenacted as such section; and

(2) as so reenacted, is amended in paragraph (1) by striking ''attained the age'' and all that follows through ''1983, and'' and inserting the following: ''attained—

''(A) the age of hiring or retirement, respectively, in effect under applicable State or local law on March 3, 1983; or

''(B) if an age of retirement was not in effect under applicable State or local law on March 3, 1983, 55 years of age; and''.

SEC. 3. STUDY AND GUIDELINES FOR PERFORMANCE TESTS.

(a) STUDY.—Not later than 3 years after the date of enactment of this Act, the Chairman of the Equal Employment Opportunity Commission (referred to in this section as ''the Chairman'') shall conduct, directly or by contract, a study, and shall submit to the appropriate committees of Congress a report based on the results of the study that shall include—

(1) a list and description of all tests available for the assessment of abilities important for the completion of public safety tasks performed by law enforcement officers and firefighters;

(2) a list of the public safety tasks for which adequate tests described in paragraph (1) do not exist;

(3) a description of the technical characteristics that the tests shall meet to be in compliance with applicable Federal civil rights law and policies;

(4) a description of the alternative methods that are available for determining minimally acceptable performance standards on the tests;

(5) a description of the administrative standards that should be met in the administration, scoring, and score interpretation of the tests; and

(6) an examination of the extent to which the tests are cost effective, safe, and comply with the Federal civil rights law and regulations.

(b) ADVISORY GUIDELINES.—Not later than 4 years after the date of enactment of this Act, the Chairman shall develop and issue, based on the results of the study required by subsection (a), advisory guidelines for the administration and use of physical and mental fitness tests to measure the ability and competency of law enforcement officers and firefighters to perform the requirements of the jobs of the officers and firefighters.

(c) CONSULTATION REQUIREMENT; OPPORTUNITY FOR PUBLIC COMMENT.—

(1) CONSULTATION.—The Chairman shall, during the conduct of the study required by subsection (a), consult with—

(A) the Deputy Administrator of the United States Fire Administration;

(B) the Director of the Federal Emergency Management Agency;

(C) organizations that represent law enforcement officers, firefighters, and employers of the officers and firefighters; and

(D) organizations that represent older individuals.

(2) PUBLIC COMMENT.—Prior to issuing the advisory guidelines required in subsection (b), the Chairman shall provide an opportunity for public comment on the proposed advisory guidelines.

(d) DEVELOPMENT OF STANDARDS FOR WELLNESS PROGRAMS.—Not later than 2 years after the date of enactment of this Act, the Chairman shall propose advisory standards for wellness programs for law enforcement officers and firefighters.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $5,000,000 to carry out this section.

SEC. 4. EFFECTIVE DATES.

(a) GENERAL EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

(b) SPECIAL EFFECTIVE DATE.—The repeal made by section 2(a) and the reenactment made by section 2(b)(1) shall take effect on December 31, 1993.●

By Mr. FEINGOLD:

S. 554. A bill to amend the provisions of titles 5 and 28, United States Code, relating to equal access to justice, award of reasonable costs and fees, hourly rates for attorney fees, administrative settlement offers, and for other purposes, to the Committee on the Judiciary.

THE EQUAL ACCESS TO JUSTICE REFORM AMENDMENTS ON 1995

● Mr. FEINGOLD. Mr. President, I introduce a bill to amend the Equal Access to Justice Act.

This legislation makes some needed improvements to the act to speed up the process of awarding attorney's fees to private parties who prevail in certain suits against the United States.

Mr. President, there has been considerable attention paid in the past few weeks to legislation such as regulatory reform, tort reform, and various pieces of the Republican contract which claim to address the concerns of many Americans that substantial change needs to take place in many areas.

My bill deals with some aspects of these concerns by assisting ordinary citizens who face legal conflicts with their Federal Government and prevail. The basic premise of EAJA is about giving individuals and small businesses the ability to confront the Government on a more equal footing. It is another step toward getting Government off the backs of the average citizen and small business owner.

I am convinced the improvements I have proposed will make the Equal Access to Justice Act work better and reduce the overall costs to taxpayers.

Mr. President, this is an area in which I have worked for several years before coming to this body.

My interest in this issue arises from my experience both as a private attorney and a member of the Wisconsin Senate.

When I was in private practice, I was aware of how attorneys' fees and the other costs associated with litigation could be a burden to a plaintiff with limited resources, even if the claim was just.

Once I entered the State senate, I authored legislation modeled on the Federal law. The State law, found in section 814.246 of the Wisconsin statutes, was enacted in 1985.

It seemed to me then, and does now, that we should do what we can to remove this burden to plaintiffs who need their claims reviewed and decided by an impartial decisionmaker.

When I joined the U.S. Senate, I began looking at how these two Federal statutes operate and whether change was needed. I was particularly interested in how we could make the system work better.

I am convinced change is necessary and that we can bring the system up to date to reflect 14 years worth of experience.

Mr. President, the Equal Access to Justice Act was enacted in 1980 and made permanent in 1985. The original intent of the act was to make the task of suing the Federal Government less daunting for small business owners. It was perceived that these owners suffered onerous Government regulation and other indignities rather than sue for relief because of the prohibitive costs of litigation.

Much of the work of this original Federal legislation was done by then-Representative Robert Kastenmeier of Wisconsin, who represented my home town of Middleton with distinction and served on the House Judiciary Committee for many years.

By giving prevailing parties in certain kinds of cases the right to seek attorney's fees and other costs from the United States, the act sought to prevent business owners from having to risk their companies in order to seek justice. It was, in effect, a way to give David another rock for his sling.

And it is the Davids, not the Goliaths, who benefit from this act.

Although I have reservations about the general concept of loser-pays rules, when a citizen faces the overpowering resources of the Federal Government, it is only fair that, when that citizen wins in court, the Government ought to reimburse the costs.

An individual with a net worth greater than $2 million may not request fees under EAJA, nor may a business or other organization with a net worth greater than $7 million and which employs more than 500 people, unless it qualifies either as a nonprofit under certain Federal tax laws or as an agricultural cooperative.

Collaterally, the act sought to provide a deterrence to excessive Government regulation, a subject in which we all share an interest.

Some would certainly argue that latter goal has not been achieved. But the Equal Access to Justice Act has been successful in other areas, although perhaps not quite as planned, Mr. President.

For one thing, the cost has been much smaller than originally anticipated. The Equal Access to Justice Act was originally estimated to cost at least $68 million per year, but according to the Administrative Office of the U.S. Courts, annual EAJA awards from 1988 to 1992 generally hovered around $5 to $7 million.

This is despite the fact that litigants are winning more cases than anticipated.

A study conducted by Prof. Susan Gluck Mezey of Loyola University at Chicago and Prof. Susan M. Olson of the University of Utah found that plaintiffs have been more successful than original estimates believed.

Professors Mezey and Olson examined 629 Federal district and appellate court decisions involving EAJA claims during the 1980's.

The Mezey-Olson study, published in the July-August 1993 edition of Judicature magazine, pointed out that the Congressional Budget Office originally assumed plaintiffs would receive fees under the act in about 25 percent of the claims filed against the Government.

However, the professors found in their sample that about 36 percent of litigants other than those suing the Department of Health and Human Services have won fees. Plaintiffs suing HHS, many of them seeking Social Security disability benefits, have a success rate most lawyers would envy, about 69 percent.

The Mezey-Olson study shows that most successful plaintiffs who seek fees have been these Social Security disability benefits applicants.

Another study, prepared in 1993 by Prof. Harold Krent of the University of Chicago law school for the Administrative Conference of the United States, found that, while the original intent of the Equal Access to Justice Act was supposed to make things a little easier on the applicants for fees, as currently written, it ''probably creates a perverse incentive to litigate'' on the part of Government attorneys.

This is because the act gives the government a chance to avoid paying fees, even when it loses its case, to the small business owner or individual who would otherwise see their costs paid. The Government can do this by showing it had substantial justification for its actions, despite the fact that those actions proved onerous to that small business owner or individual.

Professor Krent argues that the issues of whether fees should be awarded or whether the Government had substantial justification to act as it did can be nearly as exhaustive to litigate as the original complaint. This despite the fact that the substantial justification argument is successful in a relatively small number of cases.

We can fix that. We can bring the administrative costs of the Equal Access to Justice Act down.

My bill amends the act in several ways, and it is intended to make use of the act's provisions more acceptable to its original beneficiaries, the small business owners.

First, my bill raises the current $75-per-hour fee award cap to $125 per hour. It keeps the cost-of-living increase as a possible factor in setting the award, but it eliminates language which permits further increasing the award due to some special factor, defined by example in the existing statute as ''the limited availability of qualified attorneys or agents for the proceedings involved.''

This brings the fee cap more closely into line with current hourly rates charged by attorneys. It also makes these suits more attractive to attorneys, which in turn means prospective plaintiffs will have a larger pool of attorneys from which to choose. This, I think, obviates the need for the special factor language. I also believe eliminating that provision simplifies the process.

Second, my bill makes more specific the method of computing cost-of-living increases to fee awards. Under existing law, courts have been forced to make these determinations without adequate statutory guidance. Professor Krent notes in his study that ''courts have split as to when the cost-of-living increase is applicable—for instance, whether it should be calculated as of the date of the work performed, or as of some later date.''

My bill states that a cost-of-living adjustment should be calculated from the date of final disposition. In other words, if the work was performed in

1988 but the final disposition occurred in 1994, we should base the fee calculation on 1994.

Third, my bill eliminates language in the act that allows the Government to escape paying attorney's fees even if it loses a suit if it can show substantial justification for its actions.

I believe that if an individual or small business owner go up against the Federal Government and win, they win. If you are successful in your suit against the Government or in your defense against Government enforcement, and the law provides for Government payment of your fees, the government should pay the fees.

Further, Professor Krent's study indicates that fee awards were denied in only a small percentage of EAJA cases because of the substantial justification defense.

It may sound as though we're actually increasing the cost of this act, but these steps may well have the opposite effect. Even though fee awards may go up somewhat, the time and cost of litigation to the government will be reduced, and we should have a more cost-effective system.

Let me refer again to Professor Krent's study for guidance as to possible increased efficiency and cost-effectiveness.

Professor Krent noted that it is probably impossible to make an exact determination of the expense of litigating the substantial justification issue.

It is his opinion, based on a study of cases between June 1989 and June 1990, that the substantial justification defense may save some money in awards, but not enough to justify the cost of litigating the issue.

In short, this has not proven cost effective, except in a few Social Security cases involving large awards, unless you count some deterrent effect, which Professor Krent believes is impossible to quantify.

Fourth, the bill would set up a process to encourage settlement of the fee issue without litigation.

The legislation will provide the government the opportunity, similar to the process described in rule 68 of the Federal Rules of Civil Procedure, to make an offer of settlement up to 10 days prior to a hearing on the fee claim. If that offer is rejected and the party applying for reimbursement later wins a smaller award, that party shall not be entitled to receive attorney's fees or other expenses incurred after the date of the offer.

This, I think, will speed up the process, thereby reducing the time and expense of litigation.

Finally, Mr. President, my bill also requires review of the act and looks ahead to possible future expansion.

Expanding the coverage of the Equal Access to Justice Act to additional areas of litigation is not directly addressed, but it is an issue on which I hope there can be future discussion.

My bill requires the Justice Department to submit a report to Congress within 180 days that provides an analysis of the variations in the frequency of fee awards paid by specific Federal districts under EAJA and include recommendations for extending the application of the act to other Federal judicial proceedings.

According to the Administrative Conference of the United States, it remains unclear ''whether EAJA covers all litigation against the United States in article I courts, even though such proceedings are often directly analogous to those covered by the act in article III courts.''

Congress has taken some steps. In 1985, for example, EAJA was amended to cover the U.S. Claims Court. The Court of Veterans Appeals, which had decided in 1992 it was not covered by EAJA, is now covered by legislation.

Likewise, my bill requires the Administrative Office of the U.S. Courts to submit a report to Congress within 180 days that provides an analysis of the variations in the frequency of fee awards paid by applicable Federal agencies under EAJA and include recommendations for extending the application of the act to other Federal agencies and administrative proceedings.

The United States Supreme Court, in a 1991 decision, Ardestani versus INS, held that EAJA fees are available only in cases where hearings are required by law to conform to the procedural provisions of section 554 of the Administrative Procedure Act.

However, Congress had already created a statutory exception. In 1986, Congress extended EAJA's coverage to include the Program Fraud Civil Remedies Act.

It is reasonable, I believe, to investigate whether certain agency proceedings, such as deportation cases, that are nearly identical to proceedings covered by section 554 should be likewise covered by EAJA.

It may be appropriate to expand EAJA to cover certain cases subject to proceedings which are substantially the same as, but not specifically covered by, the Administrative Procedure Act.

The study provision is also meant to be responsive to recommendations made by members of a business advisory group with whom I meet on a regular basis. It was suggested that there was a need to examine why some agencies have had fee judgments awarded against them at a higher rate than others.

Let me here acknowledge the work of the Administrative Conference of the United States, which has been very helpful by conducting research into this issue, making recommendations that helped form the basis of this bill and providing valuable assistance to me in preparing this legislation.

We all know the small business owner has a rough row to hoe and that unnecessary or overburdening Government regulation is sometimes an obstacle to doing business. The Equal Access to Justice Act was conceived to help overcome that obstacle, and my amending bill is submitted to make the act work better.

Mr. President, I ask unanimous consent that the text of this legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 554

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EQUAL ACCESS TO JUSTICE REFORM.

(a) SHORT TITLE.—This Act may be cited as the ''Equal Access to Justice Reform Amendments of 1995''.

(b) AWARD OF COSTS AND FEES.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(a)(2) of title 5, United States Code, is amended by inserting after ''(2)'' the following: ''At any time after the commencement of an adversary adjudication covered by this section, the adjudicative officer may ask a party to declare whether such party intends to seek an award of fees and expenses against the agency should it prevail.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(1)(B) of title 28, United States Code, is amended by inserting after ''(B)'' the following: ''At any time after the commencement of an adversary adjudication covered by this section, the court may ask a party to declare whether such party intends to seek an award of fees and expenses against the agency should it prevail.''.

(c) HOURLY RATE FOR ATTORNEY FEES.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(b)(1)(A)(ii) of title 5, United States Code, is amended by striking out all beginning with ''$75 per hour'' and inserting in lieu thereof ''$125 per hour unless the agency determines by regulation that an increase in the cost-of-living based on the date of final disposition justifies a higher fee.);''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(2)(A)(ii) of title 28, United States Code, is amended by striking out all beginning with ''$75 per hour'' and inserting in lieu thereof ''$125 per hour unless the court determines that an increase in the cost-of-living based on the date of final disposition justifies a higher fee.);''.

(d) OFFERS OF SETTLEMENT.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504 of title 5, United States Code, is amended—

(A) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(B) by inserting after subsection (d) the following new subsection:

''(e)(1) At any time after the filing of an application for fees and other expenses under this section, an agency from which a fee award is sought may serve upon the applicant an offer of settlement of the claims made in the application. If within 10 days after service of the offer the applicant serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof.

''(2) An offer not accepted shall be deemed withdrawn. The fact that an offer is made but not accepted shall not preclude a subsequent offer. If any award of fees and expenses for the merits of the proceeding finally obtained by the applicant is not more favorable than the offer, the applicant shall not be entitled to receive an award for attorneys' fees or other expenses incurred in relation to the application for fees and expenses after the date of the offer.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412 of title 28, United States Code, is amended—

(A) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(B) by inserting after subsection (d) the following new subsection:

''(e)(1) At any time after the filing of an application for fees and other expenses under this section, an agency of the United States from which a fee award is sought may serve upon the applicant an offer of settlement of the claims made in the application. If within 10 days after service of the offer the applicant serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof.

''(2) An offer not accepted shall be deemed withdrawn. The fact that an offer is made but not accepted shall not preclude a subsequent offer. If any award of fees and expenses for the merits of the proceeding finally obtained by the applicant is not more favorable than the offer, the applicant shall not be entitled to receive an award for attorneys' fees or other expenses incurred in relation to the application for fees and expenses after the date of the offer.''.

(e) ELIMINATION OF SUBSTANTIAL JUSTIFICATION STANDARD.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504 of title 5, United States Code, is amended—

(A) in subsection (a)(1) by striking out all beginning with '', unless the adjudicative officer'' through ''expenses are sought''; and

(B) in subsection (a)(2) by striking out ''The party shall also allege that the position of the agency was not substantially justified.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d) of title 28, United States Code, is amended—

(A) in paragraph (1)(A) by striking out '', unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust'';

(B) in paragraph (1)(B) by striking out ''The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.''; and

(C) in paragraph (3) by striking out '', unless the court finds that during such adversary adjudication the position of the United States was substantially justified, or that special circumstances make an award unjust''.

(f) REPORTS TO CONGRESS.—

(1) ADMINISTRATIVE PROCEEDINGS.—No later than 180 days after the date of the enactment of this Act, the Administrative Conference of the United States shall submit a report to the Congress—

(A) providing an analysis of the variations in the frequency of fee awards paid by specific Federal agencies under the provisions of section 504 of title 5, United States Code; and

(B) including recommendations for extending the application of such sections to other Federal agencies and administrative proceedings.

(2) JUDICIAL PROCEEDINGS.—No later than 180 days after the date of the enactment of this Act, the Department of Justice shall submit a report to the Congress—

(A) providing an analysis of the variations in the frequency of fee awards paid by specific Federal districts under the provisions of section 2412 of title 28, United States Code; and

(B) including recommendations for extending the application of such sections to other Federal judicial proceedings.

(g) EFFECTIVE DATE.—The provisions of this Act and the amendments made by this Act shall take effect 30 days after the date of the enactment of this Act and shall apply only to an administrative complaint filed with a Federal agency or a civil action filed in a United States court on or after such date.●

By Mrs. KASSEBAUM (for herself, Mr. KENNEDY, and Mr. FRIST):

S. 555. A bill to amend the Public Health Service Act to consolidate and reauthorize health professions and minority and disadvantaged health education programs, and for other purposes; to the Committee on Labor and Human Resources.

HEALTH PROFESSIONALS CONSOLIDATION AND REAUTHORIZATION ACT

Mrs. KASSEBAUM. Mr. President, on behalf of Senator KENNEDY, Senator FRIST, and myself, I rise today to introduce legislation aimed at improving the supply and distribution of health professionals for our Nation's underserved communities.

The Health Professions Consolidation and Reauthorization Act of 1995 would consolidate over 44 different health professions programs administered by the U.S. Public Health Service. Furthermore, this legislation would target Federal health professions funding to support training initiatives designed to improve the health of citizens in our Nation's underserved areas.

For three decades, through the Public Health Service and Medicare, the Federal Government has funded the training of health professionals. Once perceived to be in undersupply, physicians are now in oversupply as a result of this Federal intervention. However, the uneven distribution of physicians still leaves many areas underserved. Furthermore, many believe the Nation now has too many subspecialist physicians and too few primary care providers. To correct these problems, a better targeted Federal health professions strategy is needed.

Currently, through titles III, VII, and VIII of the Public Health Service Act, the Federal Government provides over $400 million for 44 separate initiatives. When the title VII and VIII programs were last reauthorized in 1992, the General Accounting Office [GAO] was requested to review their effectiveness in: First, increasing the supply of primary care providers and other health professionals; second, improving their representation in rural and medically underserved areas; and third, improving minority representation in the health professions.

GAO recommended that Congress or the Secretary of Health and Human Services should establish:

First, national goals for the title VII and VIII programs.

Second, common outcome measures and reporting requirements for each goal;

Third, restrictions limiting the use of funds to activities whose results can be measured and reported against these goals; and

Fourth, criteria for allocating funding among professions based on relative need in meeting national goals.

The Health Professions Consolidation and Reauthorization Act of 1995 builds on GAO's recommendations and is based on defined goals for these programs. In addition, all programs would include a strong evaluation component to ensure that they are really improving national, regional, and State work force goals.

The act targets Federal funding based on the following goals:

First, Federal health professions education programs and distribution programs should assure health through: improvements in the distribution of and quality of health professionals needed to provide health services in underserved areas; and enhancement of the production and distribution of public health personnel to improve the State and local public health infrastructure.

Second, the bureaucracy required to administer the current 44 independent programs should be simplified and reduced.

Under this proposal, future Federal support for health professionals programs would be targeted to: primary and preventive care; minorities and the disadvantaged; community-based training in underserved areas; advanced degree nursing; and the National Health Service Corps. In recognition of the need for fiscal restraint, funding for these programs would be decreased by 10 percent at the end of 4 years.

Mr. President, the Health Professions Consolidation and Reauthorization Act of 1995 maintains the traditional goal of Federal health professions programs, which is to improve the supply and distribution of health professionals in underserved areas. I believe, however, that it offers a more effective and targeted approach by moving away from small, narrowly defined categorical programs toward broad areas of focus. In addition, my proposal places an emphasis on outcomes measurement—a feature sadly lacking in our current efforts.

As discussion of these issues develops, I would welcome any suggestions my colleagues or others may have for improving this legislation.

Mr. President, I ask unanimous consent that a summary of the bill be printed in the RECORD.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY OF THE HEALTH PROFESSIONS EDUCATION CONSOLIDATION AND REAUTHORIZATION ACT OF 1995

BACKGROUND

Titles III, VII, and VIII of the Public Health Service Act authorize 45 different programs. The goal of these programs is to improve the supply and distribution of a variety of types of health professionals and to improve the representation of minorities and

disadvantaged individuals in the health professions.

The focus of Title VII programs is on the training of physicians, general dentists, physician assistants, allied health personnel, public health professionals, and veterinarians. Title VIII provides for nurse training. Title III deals with the National Health Service Corps, which helps to place providers in underserved areas. These Titles include programs for direct student assistance, such as loans and scholarships, loan repayments programs, and expansion and maintenance of training programs.

SUMMARY

I. Primary care and preventive medicine training

Under this provision, funds for family physician, general pediatrician, general internists, preventive medicine physician, and physician assistant training would be authorized. These providers are generally needed to fill both rural and underserved health professional shortage areas and to help improve staffing in public health departments. Generally, priority would be given to programs which have a history of training health professionals who eventually enter practice in rural and urban underserved areas.

II. Minority and disadvantaged training

Under this provision, the Secretary would have broad discretion to fund projects which improve the number and quality of minority and disadvantaged health professionals. Many believe that an increased number of minority and disadvantaged providers would result in improvements of services in underserved areas, because such individuals are more likely to practice in those areas than are others. Generally, most minorities are currently under-represented in the health professions relative to their representation within the entire U.S. population.

III. Community-based training in underserved areas

This authority would be similar to the current Area Health Education Center program. These centers are located in underserved areas. They train medical students and other health professionals to provide services in rural and underserved areas. Exposure to these settings is generally recognized as a determinant in whether a health professional would return to practice in such settings. In addition, these centers help support practicing providers in such areas through continuing medical education support.

IV. Consolidated student assistance

This section would have a few authorities, but only one appropriation. This proposal would combine most of the current scholarship and loan programs into the current National Health Service Corps Scholarship and Loan Repayment program. As such, individuals would receive financial support only in return for service provided in primary care underserved areas. This would help to eliminate the 4,000 positions currently available in underserved areas. In addition, transfer of the current funding for scholarship programs to the Corps would help it fund more applications. Currently the National Health Service Corps is only able to provide scholarships in return for service to one out of every 10 applicants.

In addition, the current scholarship programs for minority and disadvantaged individuals would be consolidated into a single scholarship program for disadvantaged students.

The authorities which would be left in place from current law are those which do not require appropriations, but rather are revolving loan funds which currently exist at schools.

V. Nursing

The provisions of this proposal would be similar to those included in the Nursing Education Act reauthorization which was approved by the Senate last year. Under it, six current nursing programs would be consolidated into three to emphasize primary care nursing and the production of minority and disadvantaged nurses.

VI. Other priority areas

The Secretary could fund any number of other projects for health professionals training which meet national workforce needs to improve health services in underserved areas. For instance, under this provision, the Secretary could fund projects to train allied health professionals.

VII. Other provisions from last year's Minority Health Improvement Act Conference Report

Office of Minority Health

The authority for the office would be extended through FY 1999. Furthermore, the provision assures that the office is only coordinating services—not conducting its own services and research program. The authorization would be $19 million for each fiscal year through FY 1999. This would be a 10% reduction from the current appropriation of $20.668 million. (This is consistent with the general reductions in authorizations throughout the health professions bill).

State Offices of Rural Health

There would be ''such sums as necessary'' authorized through FY 1997. The cumulative appropriations would be capped at $20 million. In FY 1998, after these offices have been established in every state, the program would be repealed. The current appropriation for this program is $3.875 million.

Birth Defects

An enhanced program for an intramural program on birth defects at the Centers for Disease Control and Prevention (CDC) would be authorized. Through this program, research centers would be established, epidemiologic review of data would occur, and a national information clearing house would be established. This program is consistent with current CDC plans in this area. No funds would be authorized specifically for this program, but funding would occur under the general CDC program authority.

Traumatic Brain Injury

This provision is identical to that in the conference report. It would provide for the National Institutes of Health (NIH) to conduct research on traumatic brain injury without an authorization for a separate appropriation. It would also authorize $5 million a year for a demonstration program to be administered through the Health Resources and Services Administration, subject to the availability of funding, for the development of state systems of care for persons with traumatic brain injury. Finally, the provision would authorize a consensus conference at NIH regarding the treatment of individuals with this illness.

Health Services for Pacific Islanders

This would extend the Pacific Islanders initiative, with technical changes only. The program would be authorized at $3 million in FY 1996 and in each year through FY 1999. Finally, a study would be authorized to determine the usefulness of this initiative.

Demonstration Projects Regarding Alzheimer's Disease

There would be $5 million authorized in each of the fiscal years from FY 1996 through FY 1999. There are many technical revisions.

Miscellaneous Centers for Disease Control and Prevention Provisions

Epidemiologic Intelligence Service officers, funded through state and local governments, would not count in FTE determinations of CDC. Current fellowship programs at CDC would be authorized.

MINORITY AND DISADVANTAGED TRAINING

Purposes: (1) Provide for the training of minority and disadvantaged health professionals to improve health care access in underserved areas and to improve representation in the health professions; and (2) Provide administrative flexibility and simplification.

General Description: Under this provision, the Secretary would have broad discretion to fund projects which improve the number and quality of minority and disadvantaged health professionals. Many believe that an increased number of minority and disadvantaged providers would result in improvements of services in underserved areas because such individuals tend to practice in those areas more than others. Generally, most minority groups are currently underrepresented in the health professions relative to their representation within the entire U.S. population.

Current Law Authorities Consolidated: (The numbers before each program are keyed to the Labor Committee document: ''Health Professions Education: Summary of Federal Training Programs.''

9. Centers of Excellence in Minority Health
10. Health Careers Opportunity Program
11. Minority Faculty Fellowships
12. Faculty Loan Repayment

Summary of Provisions:

Eligible entities

Schools of medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, public health, allied health professions schools; schools offering graduate programs in clinical psychology; state or local governments; a consortia of health professions schools; or other public or private nonprofit entities could apply.

Activities

Grants and contracts would be made, as appropriate, to plan, develop, or operate:

1. Demonstrative programs.
2. Minority faculty development and loan repayment programs.
3. Programs to develop the pipeline for individuals from disadvantaged backgrounds to enter and remain in health professions schools.
4. Programs of excellence in the health professions education for minority individuals, including centers of excellence at certain historically black colleges and universities.
5. For the provision of technical assistance, work force analysis, and information dissemination.

Any grant which is funded could incorporate one or all of these activities. In addition, a preference would be given to projects which involve more than one health profession discipline or training institution and, beginning in fiscal year 1999, for centers of excellence at certain historically black colleges and universities.

The Secretary would fund grant applications which have the greatest chance of improving minority representation in the health professions and which have an above average record of retention and graduation of individuals from disadvantaged backgrounds.

Outcomes evaluation

Each program would be required to set performance outcomes and would be held accountable for meeting such outcomes. The performance outcome standards would be consistent with state, local, and national work force development priorities.

Non-Federal matching

The Secretary would have discretion to require institutional or state and local government matching grants to ensure the continuation of the project once federal aid ends.

Transition

Current grantees would continue to operate under existing authorities through the remainder of their funding cycles. The new provisions would apply only to new grants.

Authorization

There would be $51 million authorized for fiscal year 1996 and such sums as necessary through fiscal year 1999. Combined funding for these authorities in fiscal year 1995 is $50.806 million. For fiscal years 1996 through 1998, there would be a 4.25% setaside for the centers of excellence at certain historically black colleges and universities.

PRIMARY CARE AND PREVENTIVE MEDICINE TRAINING

Purposes: (1) Provide for the training of primary care providers and preventive medicine public health personnel to improve access to and quality of health care in underserved areas and to enhance state and local public health infrastructure; (2) Provide administrative flexibility and simplification.

General Description: Under this provision, funding for family physician, general pediatrician, general internist, preventive medicine physician, and physician assistant training would be authorized. These providers are generally needed to fill both rural and underserved health professional shortage areas and to help improve staffing in public health departments. Generally, priority would be given to programs which have a history of training health professionals who eventually enter practice in rural and urban underserved areas.

Current Law Authorities Consolidated: (The numbers before each program are keyed to the Labor Committee document: ''Health Professions Education: Summary of Federal Training Programs.'')

1. Family Medicine Training
2. General Internal Medicine and General Pediatrics Training
3. Physician Assistant Training
5. Preventive Medicine and Dental Public Health
12. Geriatric Medicine and Dentistry Faculty Development

Summary of Provisions:

Eligible entities

Health professions schools, academic health centers, or other public or private nonprofit entities could apply.

Activities

Grants and contracts would be made as appropriate to develop, operate, expand, or improve:

1. Departments (or academic administrative units) of family medicine.
2. Residency training programs in family medicine, general internal medicine, general pediatrics, or preventive medicine.
3. Physician assistant training programs.
4. Faculty development initiatives in primary care, including geriatrics.
5. Medical school primary care training initiatives.

Departments of Family Medicine

Departments of family medicine would be funded. Such units lead to a greater number of medical students choosing careers in primary care.

Residency Training Programs

Family medicine, general internal medicine, and general pediatrics residency programs would compete with one another for funding. Two outcome standards would be established to determine a funding preference. First, those programs with the highest percentage of providers who enter primary care practice upon the completion of training would receive a priority. In addition, programs which successfully produce professionals who go on to provide service in underserved areas would receive a preference.

Preventive medicine residencies would not compete for funding with family medicine, general internal medicine, or general pediatrics. Rather, they would receive an appropriate amount of funding, as determined by the Secretary. A preference would be given to those programs which train a high percentage of individuals who enter practice in state and local public health departments.

Physician Assistant Training Programs

Physician assistant training programs would receive an appropriate amount of funding, as determined by the Secretary, from the appropriation for this section. Those programs which have a higher output of providers who eventually enter practice in underserved areas would receive a preference for funding.

Faculty Development

The Secretary would determine which type of faculty development projects to fund based on national and state work force goals. Geriatric fellowships and faculty development could be funded.

Medical School Primary Care Training

Primary care training activities at medical schools would be funded through departments (or administrative units) of family medicine, general internal medicine, or general pediatrics. Applications from general internal medicine and general pediatrics administrative units would be required to demonstrate their institution's commitment to primary care education by: (1) A mission statement which has a primary care medical education objective; (2) faculty role models and administrative units in primary care, and general pediatrics; and (3) required undergraduate community-based medical student clerkships in family medicine, internal medicine, and pediatrics.

Outcomes evaluation

Each program would be required to set performance outcomes and would be held accountable for meeting such outcomes. The performance outcome standards would be consistent with state, local, and national work force development priorities.

Non-Federal matching

The Secretary would have discretion to require institutional or state and local government matching grants to ensure the continuation of the project once federal aid ends.

Transition

Current grantees would continue to operate under existing authorities through the remainder of their funding cycles. The new provisions would apply only to new grants.

Authorization

There would be $76 million authorized for fiscal year 1996 and such sums as necessary through fiscal year 1999. Combined funding for these authorities in fiscal year 1995 is $75.285 million. Family medicine departments would receive no less than 12 percent of the overall funding. This is consistent with the current set-aside that such departments receive.

COMMUNITY-BASED TRAINING IN UNDERSERVED AREAS

Purposes: (1) Provide support for training centers remote from health professions schools to improve and maintain the distribution of health providers in rural and urban underserved areas; (2) Provide the Secretary the option of funding geriatric training centers; (3) Provide administrative flexibility and simplification.

General Description: This authority, most similar to the current Area Health Education Center (AHEC) program, would enhance the community-based training in underserved areas of various health professionals. This goal would be achieved through greater flexibility in the design of such programs and through the leveraging of state and local resources. AHECs are generally located in underserved areas remote from academic health centers. They train health professionals to provide services in rural and underserved areas. Exposure to these settings is generally recognized as a determinant in whether a health professional returns to practice in such settings. In addition, these centers help support practicing providers in such areas through continuing medical education programs. Finally, the current program for funding geriatric training centers could continue at the discretion of the Secretary.

Current Law Authorities Consolidated: (The numbers before each program are keyed to the Senate Labor Committee document: ''Health Professions Education: Summary of Federal Training Programs.'')

40. Area Health Education Centers
41. Health Education and Training Centers
42. Geriatric Education Centers
43. Rural Health Interdisciplinary Training

Summary of Provision:

Eligible entities

Health professions schools, academic health centers, state or local governments, or other appropriate public or private nonprofit entities.

Activities

Grants and contracts would be made as appropriate to plan, develop, operate, expand, conduct demonstration projects, and to provide trainee support, for projects which:

1. Improve the distribution, supply, quality, utilization, and efficiency of personnel providing health services in urban and rural underserved populations.
2. Encourage the regionalization of educational responsibilities of the health professions schools into urban and rural underserved areas.
3. Are designed to prepare individuals effectively to provide health services in underserved areas through: preceptorships, the conduct or affiliation with community-based primary care residency programs, agreements with community-based organizations for the delivery of education and training in the health professions, and other programs.
4. Conduct interdisciplinary training of the various health professions.
5. Provide continuing medical and health professional education to professionals practicing in the underserved areas served by the grantee.

A preference would be given to projects which involve one or more health professions discipline or training institution, train individuals who actually enter practice in underserved areas, and have a high output of graduates who enter primary care practice.

In addition, the Secretary may fund geriatric training centers if the Secretary determines such entities are needed to improve the geriatric skills of health providers.

Outcomes evaluation

Each program would be required to set performance outcomes and would be held accountable for meeting such outcomes. The performance outcome standards would be consistent with state, local, and national work force development priorities.

Non-Federal matching

The Secretary would have discretion to require institutional or state and local government matching grants to ensure the continuation of the project once federal aid ends.

Transition

Current grantees would continue to operate under existing authorities through the remainder of their funding cycles. The new provisions would apply only to new grants.

Authorization

There would be $39 million authorized for fiscal year 1996 which would be reduced to $25 million by fiscal year 1999. Combined funding for these authorities in fiscal year 1995 is $39.159 million. The $14 billion in funding reductions over the three-year period is equivalent to the current combined appropriations for the Health Education and Training Centers, Rural Health Interdisciplinary Training Programs, and the geriatric training centers. Funding will be phased down to allow for the completion of current project funding periods.

HEALTH PROFESSIONS WORK FORCE DEVELOPMENT

Purpose: Provide support to strengthen capacity for the education of individuals in certain health professions which the Secretary determines to have a severe shortage of personnel and for improving the care of underserved populations and other high-risk groups.

Current Law Authorities Consolidated: (The numbers before each program are keyed to the Labor Committee document: ''Health Professions Education: Summary of Federal Training Programs.'')

4. Public Health Special Projects
6. Health Administration Traineeships and Special Projects
13. Geriatric Optometry Training
14. General Dentistry Training
15. Allied Health Advanced Training and Special Projects
16. Podiatric Primary Care Residency Training
17. Chiropractic Demonstration Projects
45. AIDS Dental Services

Summary of Provisions:

Eligible Entities

Schools of medicine, osteopathic medicine, public health, dentistry, allied health, optometry, podiatric medicine, chiropractic medicine, veterinary medicine, pharmacy, or graduate programs in mental health practice.

Activities

Grants and contracts would be made as appropriate to plan, develop, or operate programs to strengthen the capacity for health professions education and practice. The Secretary shall have broad discretion to fund projects, but shall give priority to projects which would improve care for underserved populations and other high-risk groups and which would increase the number of practitioners in any health professions field for which the Secretary determines there is a severe shortage of professionals.

In general, funds under this section could be used to provide for faculty development, model demonstrations, trainee support, technical assistance, or work force analysis.

Outcomes evaluation

Each program would be required to set performance outcomes and would be held accountable for meeting such outcomes. The performance outcome standards would be consistent with state, local, and national work force development priorities.

Non-Federal matching

The Secretary would have discretion to require institutional or state and local government matching grants to ensure the continuation of the project once federal aid ends.

Transition

Current grantees would continue to operate under existing authorities through the remainder of their funding cycles. The new provisions would apply only to new grants.

Authorization

There would be $20 million authorized for fiscal year 1996 which would be reduced to $5 million by fiscal year 1999. Combined funding for these authorities in fiscal year 1995 is $20.264 million. The three-year period to phase down this funding would allow for the completion of current project award periods.

NURSING WORK FORCE DEVELOPMENT

Purposes: (1) Provide for the training of advanced degree nurses and other nurses to improve access to and quality of health care in underserved medical and public health areas; and (2) Provide administrative flexibility and simplification.

General Description: This proposal would provide for the training of advanced degree nurses, including nurse practitioners, nurse midwives, nurse anesthetists, and public health nurses. In addition, projects to improve nursing work force personnel diversity and to expand the training of nurses in certain priority settings would occur. The Secretary would have broad discretion to determine which projects to fund. Generally, projects which would ultimately lead to a greater number of nursing providers for rural and underserved areas, including local and state public health departments, would receive a funding preference.

Current Law Authorities Consolidated: (The numbers before each program are keyed to the Labor Committee document: ''Health Professions Education: Summary of Federal Training Programs.'')

18. Nursing Special Projects
19. Advanced Nurse Education
20. Nurse Practitioner/Nurse Midwife Education
21. Nurse Anesthetist Training
22. Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds
32. Professional Nurse Traineeships

Summary of Provisions:

Eligible entities

Schools of nursing (collegiate, associate degree, diploma), nursing centers, state or local governments, and other public or nonprofit private entities.

Activities

Grants and contracts would be made, as appropriate, to plan, develop, or operate:

1. Advanced practice nurses training programs including programs for nurse practitioners, nurse midwives, nurse anesthetists, and public health nurses.
2. Programs to increase nursing work force diversity.
3. Projects to strengthen the capacity for basis nurse education in certain priority areas.

Amounts provided under any one of these areas could be used for faculty development, demonstrations, trainee support, work force analysis, technical assistance, and dissemination of information.

In determining which projects to fund under each of these areas, the Secretary would give priority to those projects which would substantially benefit rural or underserved populations, including public health departments. Generally, those programs which tend to produce nurses for these areas, including primary care nurses, would receive funding priority. In addition, the Secretary would have broad discretion to distribute the appropriation among these different activity areas. Funds would be allocated among these activities to meet the priority for underserved areas and to meet relevant national and state nursing work force goals.

The National Advisory Council on Nurse Education and Practice would continue to advise the Secretary regarding nursing issues. Funding for this council would be provided through the appropriations under this section.

Advance Practice Nurses Training

Projects that support the enhancement of advanced practice nursing education and practice would be funded. In addition, a grantee could use a portion of the funds to provide for traineeships. Such traineeships would provide stipends to students to help cover the costs of tuition, books, fees, and reasonable living expenses. Programs which could receive support under this authority are those which train nurse practitioners, nurse midwives, nurse anesthetists, public health nurses, and other advanced degree nurses.

Programs To Increase Nursing Work Force Diversity

Projects to increase nursing education opportunities for individuals who are from disadvantaged racial and ethnic backgrounds under-represented among registered nurses would be funded. Such projects could provide student stipends or scholarships, pre-entry preparation, or retention activities.

Projects To Strengthen Basic Nurse Education

Funding priority would be given to basic nurse education programs designed to: (1) improve nursing services in schools and other community settings; (2) provide care for underserved populations and other high-risk groups such as elderly, individuals with HIV-AIDS, substance abusers, homeless, and battered women; (3) provide skills needed under new health care systems; (4) develop cultural competencies among nurses; (5) and serve other priority areas.

Outcomes evaluation

Each program would be required to set performance outcomes and would be held accountable for meeting such outcomes. The performance outcome standards would be consistent with state, local, and national work force development priorities.

Non-Federal matching

The Secretary would have discretion to require institutional or state and local government matching grants to ensure the continuation of the project once federal aid ends.

Transition

Current grantees would continue to operate under existing authorities through the remainder of their funding cycles. The new provisions would apply only to new grants.

Authorization

There would be $62 million authorized for fiscal year 1996, which would be reduced to $59 million for fiscal year 1999.

CONSOLIDATED FINANCIAL ASSISTANCE AND OTHER LOAN PROGRAMS

Purposes: (1) Provide consolidation of current loan repayment, scholarship, and scholarship payback programs into a flexible National Health Service Corps program requiring service payback in underserved areas in return for federal financial assistance; (2) Continue certain loan programs which do not require federal appropriations or that guarantee the availability of loan sources in the market for health professions students; (3) Consolidate scholarship programs for the disadvantaged; and (4) Provide administrative flexibility and simplification.

General Description: This proposal would combine most of the current targeted scholarship and loan repayment programs into the existing National Health Service Corps Scholarship and Loan Repayment program. As such, individuals would only receive ''free'' financial support in return for service provided in underserved areas. This would help to eliminate the shortage of over 4,000

positions in primary care underserved areas and in underserved public health positions in state and local health departments.

The three scholarship programs for minorities and disadvantaged students would also be consolidated into a single scholarship program for disadvantaged students.

The authorities which would not be consolidated are those which do not require appropriations but, rather, are revolving loan funds which currently exist at schools. In addition, the current Health Education Assistance Loan Guarantee program would also be left in place.

(This consolidated program is meant to complement and other federal financial assistance programs for which health professional and public health professional students qualify. Generally, the funds provided under the Perkins and Stafford Loan programs, administered through the Department of Education, provide sufficient resources to allow anyone the opportunity to pursue a career in any health professions training program. For instance, medical students may qualify for $23,500 annually in loans under these two programs—more than enough to finance the average medical school education.)

Current Law Authorities Consolidated: (The numbers before each program are keyed to the Labor Committee document: ''Health Professions Education: Summary of Federal Training Programs.''

23. Scholarships for Disadvantaged Students

25. Exceptional Financial Need Scholarships

26. Financial Assistance to Disadvantaged Health Professions Students

28. State Loan Repayment Program

29. Community Based Scholarship Program

30. Nursing Loan Repayment Program

36. National Health Service Corps Scholarship Program

37. National Health Service Corps Loan Repayment Program

39. Public Health Traineeships

Current Law Authorities Continued Without Consolidation: (These are revolving loan funds administered by schools which do not require appropriations.)

33. Nursing Student Loan

34. Primary Care Loan Program

35. Health Professional Student Loans

36. Loans for Disadvantaged Students

Current Law Authority Requiring a Separate Appropriation:

38. Health Education Assistance Loans

Summary of Provisions:

Part I. Consolidated Scholarships and Loans

A. National Health Service Corps Scholarship and Loan Payback

Eligible entities

Health professionals and public health professionals (for loan payback only).

Activities

The Secretary would have broad authority to offer the following scholarship or loan repayment options to persons who agree to provide services through the National Health Service Corps in underserved areas. This consolidated authority would be patterned after the existing National Health Service Corps Scholarship and Loan Repayment programs.

1. Provide scholarships to health professional students in return for a commitment for such students to practice in the National Health Service Corps in underserved areas once their education is completed.

2. Provide loan repayment to:

a. Health professionals and public health personnel in return for a commitment from such persons to practice in the National Health Service Corps designated underserved sites or, in the case of public health personnel, state and local health departments with public health professional shortages.

b. Nurses for an amount no greater than 85 percent of their debt for persons who agree to practice in National Health Service Corps designated underserved areas.

3. Provide funding to states to operate their own loan repayment or scholarship programs. States could designate their own underserved areas utilizing their own criteria if such criteria are approved by the Secretary.

The Secretary would determine how much to provide for each activity to meet the goals of providing service to underserved areas and retaining providers in underserved areas. States applying for grant funding to run their own programs would receive priority.

Authorization

There would be $90 million authorized for fiscal year 1996 and such sums as necessary through fiscal year 1999. This amount of funding is consistent with the combined current appropriations for these programs.

B. Scholarships for Disadvantaged Students

Eligible entities

Health professions schools.

Activities

The Secretary would award grants to health professions schools for the awarding of scholarships to disadvantaged students. Eligible entities would receive a preference based on the proportion of graduating students going into primary care, the proportion of minority students, and the proportion of graduates working in medically underserved areas.

Authorization

There would be $32 million authorized for fiscal year 1996 through 1999. This amount of funding is consistent with the combined current appropriation for these programs.

Part II. Current Loan Authorities Continued Without Appropriations

Activities

The current Nursing Student Loan (NSL) program, Primary Care Loan (PCL) program, Health Professions Student Loan (HPSL) program, and the Loans for Disadvantaged Students (LDS) programs would continue. These programs would continue using the revolving funds which remain at health professions schools.

Authorization

There would be $8 million authorized in each of fiscal years 1996 through 1998 for the LDS program. For fiscal year 1999, the authority for appropriations would be repealed after the revolving funds begin to be paid back by current loan recipients.

The NSL, PCL, and HPSL programs, which do not currently receive appropriations, would not be authorized to receive appropriations.

Part III. HEAL Loans

Activities

The HEAL loan program would continue in its current form.

Authorization

This program would continue to be authorized at such sums as necessary to guarantee sufficient funds for the insurance pool for loan defaulters. The current premiums provided by borrowers are insufficient to meet the needs of this fund. As a result of reforms made in this program in fiscal year 1992, HHS is improving its loan collection and the insurance fund is growing. Over time, this program may not require appropriations. The current appropriation is $24.972 million.

By Mr. KERRY (for himself and Mr. KENNEDY):

S. 556. A bill to amend the Trade Act of 1974 to improve the provisions of trade readjustment allowances during breaks in training, and for other purposes; to the Committee on Finance.

TRADE ADJUSTMENT ASSISTANCE IMPROVEMENT ACT

Mr. KERRY. Mr. President, last October I received a letter from a Mrs. Myra Hoey of Blandford, MA. Mrs. Hoey detailed a problem that her husband, David, was having with the Trade Adjustment Assistance program which oversees the benefits provided to workers displaced by the North American Free-Trade Agreement. David Hoey was an employee at the Westfield River Paper Co. in Massachusetts. Along with over 100 other employees, David lost his job when the paper company moved to Canada after Congress approved NAFTA.

When we passed NAFTA in 1993, we recognized the importance of assisting those working families, like the Hoeys, who might be displaced by this agreement in obtaining gainful employment in another field through the Trade Adjustment Assistance Program. For many years the Trade Adjustment Assistance Program has been very helpful to the citizens of this Nation by helping them to seize an opportunity for a second chance—for another career or further education. However, Mr. President, occasionally some Federal guidelines fall behind the times and need to be adjusted in order to continue to be effective. Mrs. Hoey and the other workers in Westfield, MA, discovered—the hard way—that the Trade Adjustment Assistance Program has problems that need to be fixed.

Workers displaced because of import-related movement of companies are eligible for trade adjustment assistance [TAA]. Workers displaced specifically because of NAFTA related movement are eligible for trade readjustment allowances [TRA]. TAA and TRA provide 52 weeks of unemployment insurance-like payments to these workers and pay for approved training programs to train these workers.

Because their employer moved to Canada, the Westfield River Paper Co. employees were eligible for TRA, and a number of them began a retraining program at Springfield Technical Community College during the fall of last year. These workers dedicated themselves to the task of learning new skills so that they could support their families. However, during Christmas break from their training, these hard-working former employees found out that their benefits were cut off for a full month.

This is because the law that created TAA includes a provision that limits TAA and TRA payments during scheduled breaks in training to the first 14 days of these breaks.

Consequently, those workers who are out of work and are training for new jobs and who are enrolled in programs with 6-week winter breaks lose a month of benefits, even though they

are willingly participating in good faith in a training program and have no other source of income. The missed weeks of benefits are tacked on to the end of the displaced workers' benefit year so that a total of 52 weeks of TRA is still provided.

The motivation behind this provision is to encourage workers to chose training programs with shorter breaks so that the workers will be moved into the workforce with greater speed. In addition, workers are implicitly encouraged to select programs that train them quickly because benefits only last 1 year.

However, not all workers have a plethora of programs from which to choose. Some are limited to only those programs offered by their local community college. Most colleges and universities have winter breaks longer than what is allowed by TRA, and as a result, benefits are temporarily suspended to those people enrolled in this program at those colleges.

Extending to 45 calendar days the period of a break in training through which TAA and TRA benefits can be paid would be helpful to displaced workers. It would be very nearly cost-neutral, because no additional weeks of benefits would be provided, and it would eliminate inequities in the existing system. And at the risk of redundancy, workers would still be encouraged to choose programs with smaller breaks, because the total amount of time that they will receive benefits will still be only a year. Finally, a 45 calendar day training break limitation would encourage workers to engage in summer programs if their period of retraining overlaps summer recess.

The bill I am introducing today, the Trade Adjustment Assistance Program Improvement Act, provides this increase in the training break during which benefits may continue to be paid. It also would clear up another problem as well, one that touches only on TRA's. I welcome my distinguished senior colleague from Massachusetts, Senator KENNEDY, as an original cosponsor.

In order to qualify for a TRA, the law currently requires a displaced worker to enroll in training by the end of the 16th week after his or her initial unemployment compensation benefit period. the rationale for the time limit is that adjustment assistance is generally more effective if adjustment decisions are made relatively early in the unemployment period. However, the current language creates some inequities because the initial benefit period is triggered by initial lay offs and continues to run even if a worker is recalled.

For example, if a worker is recalled 4 weeks after an initial layoff, then is laid off a second time after 12 weeks of employment, that worker would not qualify for TRA even if the worker immediately enrolled in training because the 16 weeks of his initial benefit period would have expired.

It makes a lot more sense to allow the worker 16 weeks from his or her most recent separation in order to determine whether retraining is needed. This would provide the worker an opportunity to conduct a job search and to explore other options before making an enrollment decision, while at the same time encouraging the person to make a decision at a point early enough to promote effective adjustment.

Therefore, this bill takes into account situations involving recalls and would require that in order to qualify for TRA, a worker must enroll in training by the end of the 16th week after his or her most recent separation from the impacted firm.

These two changes, one to both TAA and TRA, and one only to TRA, would improve the entire TAA system in small but tangible ways, and at slight additional cost enable these programs more effectively to help the people they were designed to aid. People like David and Myra Hoey, and other workers in Michigan, Tennessee, Washington, Pennsylvania, and around the Nation will get the assistance they need to get back on their feet and into the work force.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 556

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Trade Adjustment Assistance program Improvement act of 1995''.

SEC. 2. PROVISION OF TRADE READJUSTMENT ALLOWANCES DURING BREAKS IN TRAINING.

Section 233(f) of the Trade Act of 1974 (19 U.S.C. 2293(f)) is amended by striking ''14 days'' and inserting ''45 days''.

SEC. 3. TRANSITIONAL ADJUSTMENT ASSISTANCE PROGRAM.

(a) IN GENERAL.—Section 250(d)(3)(B)(i) of the Trade Act of 1974 (19 U.S.C. 2331(d)(3)(B)(i)) is amended by striking ''of such worker's initial unemployment compensation benefit period'' and inserting ''after such worker's most recent qualifying separation''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to workers covered under a certification issued on or after the date of enactment of this Act.

ADDITIONAL COSPONSORS

S. 12

At the request of Mr. BREAUX, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 12, a bill to amend the Internal Revenue Code of 1986 to encourage savings and investment through individual retirement accounts, and for other purposes.

S. 14

At the request of Mr. DOMENICI, the name of the Senator from California [Mrs. FEINSTEIN] was added as a cosponsor of S. 14, a bill to amend the Congressional Budget and Impoundment Control Act of 1974 to provide for the expedited consideration of certain proposed cancellations of budget items.

S. 141

At the request of Mrs. KASSEBAUM, the name of the Senator from New Hampshire [Mr. SMITH] was added as a cosponsor of S. 141, a bill to repeal the Davis-Bacon Act of 1931 to provide new job opportunities, effect significant cost savings on Federal construction contracts, promote small business participation in Federal contracting, reduce unnecessary paperwork and reporting requirements, and for other purposes.

S. 234

At the request of Mr. CAMPBELL, the name of the Senator from Maine [Ms. SNOWE) was added as a cosponsor of S. 234, a bill to amend title 23, United States Code, to exempt a State from certain penalties for failing to meet requirements relating to motorcycle helmet laws if the State has in effect a motorcycle safety program, and to delay the effective date of certain penalties for States that fail to meet certain requirements for motorcycle safety laws, and for other purposes.

S. 256

At the request of Mr. DOLE, the names of the Senator from Colorado [Mr. CAMPBELL], the Senator from Washington [Mrs. MURRAY], and the Senator from Iowa [Mr. HARKIN] were added as cosponsors of S. 256, a bill to amend title 10, United States Code, to establish procedures for determining the status of certain missing members of the Armed Forces and certain civilians, and for other purposes.

S. 258

At the request of Mr. PRYOR, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of S. 258, a bill to amend the Internal Revenue Code of 1986 to provide additional safeguards to protect taxpayer rights.

S. 277

At the request of Mr. D'AMATO, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 277, a bill to impose comprehensive economic sanctions against Iran.

S. 293

At the request of Mr. CONRAD, the name of the Senator from Minnesota [Mr. WELLSTONE] was added as a cosponsor of S. 293, a bill to amend title 38, United States Code, to authorize the payment to States of per diem for veterans receiving adult day health care, and for other purposes.

S. 327

At the request of Mr. HATCH, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S.